

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

ANTHONY GRAHAM §  
VS. § CIVIL ACTION NO. 1:21-CV-378  
WARDEN DOBBS, ET AL. §

REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff Anthony Graham, a prisoner confined at the United States Penitentiary in Beaumont, Texas, proceeding *pro se*, filed this civil rights action pursuant to *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

The above-styled action was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636 for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Discussion

On July 29, 2021, plaintiff was ordered to either pay the \$402 filing fee or submit an application to proceed *in forma pauperis*. Plaintiff was given twenty days to comply with the court order. As of this date, plaintiff has not paid the filing fee or requested leave to proceed *in forma pauperis*.

Federal Rule of Civil Procedure 41(b) authorizes the district court to dismiss an action *sua sponte* for failure to prosecute or to comply with a court order. *Griggs v. S.G.E. Management*, 905 F.3d 835, 844 (5th Cir. 2018); *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998). “The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending

cases and to avoid congestion in the calendars of the District Courts.” *Link v. Wabash Railroad*, 370 U.S. 626, 629-30 (1962); *Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997).

By choosing not to comply with the court order, plaintiff has failed to prosecute this case diligently. Accordingly, this action should be dismissed without prejudice for want of prosecution.

Recommendation

This action should be dismissed without prejudice for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b).

Objections

Within fourteen days after receipt of the magistrate judge’s report, any party may serve and file written objections to the findings of facts, conclusions of law and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

Failure to file written objections to the proposed findings of facts, conclusions of law and recommendations contained within this report within fourteen days after service shall bar an aggrieved party from the entitlement of *de novo* review by the district court of the proposed findings, conclusions and recommendations and from appellate review of factual findings and legal conclusions accepted by the district court except on grounds of plain error. *Douglass v. United Services Automobile Ass’n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc); 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72.

**SIGNED this the 24th day of August, 2021.**

  
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KEITH F. GIBLIN  
UNITED STATES MAGISTRATE JUDGE